



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

MOTION FOR RECONSIDERATION DENIED: July 8, 2010

CBCA 1460

WALSH/DAVIS JOINT VENTURE,

Appellant,

v.

GENERAL SERVICES ADMINISTRATION,

Respondent.

Edward J. Sheats, Jr. of Sheats & Associates, P.C., Brewerton, NY, counsel for Appellant.

Dalton F. Phillips and Leigh Erin S. Izzo, Office of General Counsel, General Services Administration, Washington, DC, counsel for Respondent.

Before Board Judges **DANIELS** (Chairman), **STERN**, and **HYATT**.

DANIELS, Board Judge.

On June 10, 2010, the Board denied cross-motions for summary relief filed by the respondent in this case, the General Services Administration (GSA), and the appellant, Walsh/Davis Joint Venture (WDJV). Within GSA's motion was an assertion that we must dismiss for lack of jurisdiction the part of the current claim which was not presented to the contracting officer for decision. We rejected this contention because the part in question is based on the same operative facts as the claim which was so presented. GSA now moves us to reconsider our ruling on the motion to dismiss.

The part of the claim which the motion to dismiss and the motion for reconsideration address is for additional costs allegedly incurred by WDJV subcontractor Global Precast, Inc. in supplying a face mix for the precast panels on Buildings A, B, and C which was different from the face mix anticipated in the contract. We held that although this part of the claim was not presented to the contracting officer, we have jurisdiction to consider it. The claim presented to the contracting officer included additional costs for the alleged change in the face mix for all the other buildings in the project, and the face mix for Buildings A, B, and C was identical to the face mix for all the other buildings. Thus, the face mix claim as to Buildings A, B, and C will succeed or fail on the merits of the face mix claim that was presented to the contracting officer; the current claim differs only in amount from the original claim.

GSA's motion for reconsideration appears to be premised on the belief that "the original claim did not raise any issues concerning a change in the color or composition of the face mix." Motion at 4. Instead, the agency asserts, "the claim filed with the Contracting Officer alleged a change[] to the finish of the Garden Wall and Buildings D, E, F and G from smooth form to acid washed finish. Color was never raised as an issue." *Id.* at 2.

As we pointed out in our earlier decision, this belief is not correct. The original claim did include line items for "[a]dditional cost of acid wash finish" for the garden wall and for Buildings D, E, F, and G, the guardhouse, the entryway, and the credit union. It also, however, included line items for "[a]dditional cost of G715 face mix" for these portions of the project. As WDJV notes in opposing the motion for reconsideration, its claim encompasses additional costs for the face mix, but not the finish, for Buildings A, B, and C because while the face mix for those buildings may have changed, the finish of the precast for those structures remains as specified in the contract.

Decision

GSA has given us no reason to reconsider our decision. Consequently, the agency's **MOTION FOR RECONSIDERATION** is **DENIED**.

STEPHEN M. DANIELS
Board Judge

We concur:

JAMES L. STERN
Board Judge

CATHERINE B. HYATT
Board Judge